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Attorney for Petitioner
ETHAN EDWARD COSTON

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ETHAN EDWARD COSTON,)	Case No.: 37-2019-00018801-CU-WM-CTL
)	
Petitioner/Plaintiff,)	VERIFIED PETITION FOR WRIT OF
)	MANDATE, INJUNCTIVE AND
v.)	DECLARATORY RELIEF FOR
)	VIOLATIONS OF THE CALIFORNIA
REGENTS OF THE UNIVERSITY OF)	PUBLIC RECORDS ACT WITH
CALIFORNIA,)	EXHIBITS 1 THROUGH 10.
)	
Respondent/Defendant.)	
)	<i>[Cal. Constitution Article I § 3; Cal. Gov't.</i>
)	<i>Code Section 6250 et seq.]</i>

This action seeks relief from the failure of Respondent/Defendant REGENTS OF THE UNIVERSITY OF CALIFORNIA, at its UNIVERSITY OF CALIFORNIA, SAN DIEGO campus, to perform as required by the California Public Records Act ("CPRA")¹ and the California Constitution.² Petitioner/Plaintiff ETHAN EDWARD COSTON seeks a writ of mandate, and injunctive and declaratory relief under California Code of Civil Procedure sections 1085 and 1060 and Government Code sections 6258 and 6259. In this verified Petition, Petitioner alleges as follows:

¹ Government Code, Section 6250, *et seq.*

² Article I, Section 3

1 **INTRODUCTION**

2 1. Over the past year, the Country has been rocked by stories of sexual
3 harassment and assault in all areas of society. When these occur in our government
4 institutions, the people are entitled to know how pervasive the problem is, how the
5 agency responded, and what steps are being taken to reduce the pervasiveness of the
6 problem in the future.

7 2. The public's right to find out about these issues, and all issues affecting
8 government, is protected by the California Public Records Act ("CPRA") and the
9 California Constitution.

10 3. The law on disclosure of employee misconduct is well settled.

11 4. The Regents of the University of California understand that these types of
12 records are subject to mandatory disclosures because they have disclosed these types of
13 complaints and investigations in response to other CPRA requests, including to
14 Petitioner himself.

15 5. Yet, when the University of California, San Diego ("the University,"
16 "UCSD") was asked to disclose records related to a Title IX investigation which found,
17 by a preponderance of the evidence, that a former management employee in the
18 bookstore had violated the University's sexual harassment policy via conduct toward a
19 student-employee, it refused. Not only has the University refused to provide even a
20 single record, including any emails or the investigation report, it refused to even
21 confirm the records exist, in direct violation of its duties under the CPRA.

22 6. Petitioner ETHAN EDWARD COSTON, a journalist with The Triton, an
23 independent, student-run campus newspaper, is now forced to bring this lawsuit in
24 order to shed light on this situation as a last resort after exhausting all other options to
25 get UCSD to comply with its obligations under the CPRA.

26 /

27 /

28 /

1 **THE PARTIES**

2 7. Petitioner/Plaintiff ETHAN EDWARD COSTON is an undergraduate
3 student at the University of California, San Diego and a journalist with The Triton, an
4 independent, student-run campus newspaper. In that capacity, he regularly reports on
5 issues of concern to the public and to the UCSD community, students, and faculty. He
6 lives in San Diego, California. Petitioner is a member of the public, a citizen of the State
7 of California, and is within the class of persons beneficially interested in Respondent's
8 performance of its legal duties, including those imposed by the CPRA.

9 8. Respondent/Defendant REGENTS OF THE UNIVERSITY OF
10 CALIFORNIA ("Respondent") is the governing body empowered under the California
11 Constitution, Article IX, Section 9, to administer the University of California, which
12 comprises ten campuses, one of which is the University of California, San Diego.
13 Respondent's headquarters are located at 1111 Franklin St. in the City of Oakland,
14 located in Alameda County, California. The records at issue in this litigation or some
15 part thereof are held and maintained by the University at its campus located at 9500
16 Gilman Drive, La Jolla, CA 92093-0021. Respondent is a public agency within the
17 meaning of Government Code, section 6252(d), and is, therefore, subject to the CPRA.

18 **JURISDICTION AND VENUE**

19 9. This Court has jurisdiction over this matter pursuant to Code of Civil
20 Procedure sections 1085 and 1060 and Government Code sections 6258 and 6259.

21 10. Venue is proper in this court under Government Code section 6259(a) as
22 the requested records, or some part thereof, are located at UCSD, in the County of San
23 Diego.

24 **FACTS SUPPORTING THE CAUSE OF ACTION**

25 11. Petitioner is informed and believes, and on that basis alleges, that on
26 November 28, 2017, UCSD's Office for the Prevention of Harassment & Discrimination
27 issued a report which sustained findings of allegations that UCSD employee Alan
28 Labotski sexually harassed a student-employee under his supervision.

1 12. Petitioner submitted a CPRA request to UCSD on April 11, 2018 (the
2 "First Request"). A true and correct copy of that Request is attached hereto as **Exhibit**
3 **1.**³ In the First Request, Petitioner requested copies of any "Title IX and Personnel
4 Records related to Alan Labotski, former Operations Manager at the UC San Diego
5 Bookstore."

6 13. UCSD responded on April 25, 2018. In its response, UCSD failed to
7 provide records and refused to confirm whether it was withholding responsive records.
8 Instead, it cited generally to Government Code, section 6254(c) and stated, "[t]he
9 University has determined that there are no disclosable records that are responsive to
10 your request." A true and correct copy of that denial is attached as **Exhibit 2.**

11 14. Because Petitioner was informed that responsive records did exist,
12 Petitioner submitted a second, more tailored, request for records to UCSD on July 16,
13 2018 (the "Second Request"). In the Second Request, Petitioner sought any records (1)
14 of complaints or charges of misconduct against Labotski that resulted in disciplinary
15 action or a finding of responsibility; (2) records reflecting the total number and nature
16 of all complaints against Labotski, including complaints regarding sexual harassment;
17 and, (3) where Labotski was named as the respondent in a Title IX investigation. A true
18 and correct copy of the Second Request is attached as **Exhibit 3.**

19 15. On August 3, 2018, UCSD denied the Second Request. UCSD called it
20 "duplicative of the request [Petitioner] submitted on April 11, 2018," and stated that
21 "the University affirms its determination on that request, and reiterates that there are
22 no disclosable records that are responsive to your request." A true and correct copy of
23 UCSD's response to the Second Request is attached as **Exhibit 4.**

24 16. On August 15, 2018, Petitioner challenged UCSD's denials, citing to case
25 law regarding the public nature of employee discipline records under the CPRA.
26 Petitioner further informed UCSD that continued withholding may result in Petitioner

27 ³ All exhibits referenced in this Petition are true and correct copies of the documents that they
28 purport to be and are incorporated into the Petition by reference as if set forth in full.

1 taking legal action to pursue disclosure of the requested records. A true and correct
2 copy of that email is attached as **Exhibit 5**.

3 17. On August 31, 2018, UCSD responded, but continued to refuse to provide
4 records or to confirm whether responsive records exist. A true and correct copy of
5 UCSD's August 31 email is attached as **Exhibit 6**.

6 18. As of the date of this Petition, UCSD has failed to produce even a single
7 record in response to Petitioner's requests dated April 25, 2018 and July 16, 2018.

8 **Petitioner's Request for UCSD Bookstore Director's Emails**

9 19. On October 29, 2018, Petitioner made additional CPRA requests for
10 emails belonging to former UCSD bookstore director Tom Bonetati, Labotski's
11 supervisor in the UCSD Bookstore (the "Third Request"). Petitioner requested that
12 UCSD disclose any emails to and/or from Bonetati pertaining to the investigation of
13 Labotski conducted by the UCSD's Office for the Prevention of Harassment &
14 Discrimination ("OPHD") and any emails between Labotski and Bonetati from July 1,
15 2017, through January 31, 2018. A true and correct copy of the Third Request is
16 attached as **Exhibit 7**.

17 20. On November 13, 2018, UCSD responded to the request for emails
18 related to the OPHD investigation and again refused to provide records or to confirm
19 the existence of responsive records. UCSD referenced Petitioner's previous requests,
20 stating:

21 You submitted several prior CPRA requests this year seeking records or
22 information about complaints or investigations of misconduct by Alan
23 Labotsky (*sic*). In those cases the University responded that there were no
24 disclosable records that were responsive to your request, and declined to
25 confirm or deny the existence of responsive records, for the reasons set
forth below. The same reasoning applies to this new request, and the
University has again determined that there are no disclosable records that
are responsive to your request

26 A true and correct copy of the email is attached as **Exhibit 8**.
27
28

1 21. Petitioner replied the same day, informing UCSD that other parties had
2 already confirmed the existence of the investigation and that he would take legal action
3 for the release of the records if UCSD continued to withhold them. A true and correct
4 copy of the email is attached as **Exhibit 9**.

5 22. On November 14, 2018, UCSD responded to the request for emails
6 between Labotski and Bonetati. In a departure from its other responses, UCSD asserted
7 the non-existence of records, stating: "[a] search for responsive records has been
8 completed. There are no records responsive to your request." A true and correct copy of
9 the email is attached as **Exhibit 10**.

10 23. As of the date of this Petition, UCSD has failed to produce even a single
11 record in response to any of Petitioner's three CPRA Requests.

12 24. In other instances, UCSD has released to members of the public,
13 including to Petitioner, Title IX investigation records which identify employees against
14 whom findings were sustained. Respondent has also released to Petitioner Title IX
15 investigation records which identify offending employees at both its Santa Cruz and Los
16 Angeles campuses.

17 25. Petitioner is informed and believes, and on that basis, alleges that UCSD
18 does have responsive records to all of his CPRA requests and that those records are
19 public records, not subject to withholding under any exemption to the CPRA.

20
21 **FIRST CAUSE OF ACTION**

22 **VIOLATION OF THE CALIFORNIA CONSTITUTION ARTICLE 1, § 3(B)**

23 26. Petitioner incorporates herein by reference the allegations of Paragraphs
24 1 through 25 of this Petition as though set forth herein in full.

25 27. The California Constitution provides an independent right of access to
26 government records: "The people have the right of access to information concerning
27 the conduct of the people's business and, therefore, the meetings of public bodies and
28 the writings of public officials and agencies shall be open to public scrutiny." Cal.

1 Constitution, Art. 1 § 3(b)(1). This provision was adopted by the voters in 2004
2 because, as the ballot argument supporting the measure states, when Californians
3 asked questions of their government, they increasingly found “that answers are hard to
4 get.” The constitutional provision is intended to reverse that trend.

5 28. Respondent’s failure to provide records in response to Petitioner’s Public
6 Records requests violated Article 1, Section 3(b) of the California Constitution.

7
8 **SECOND CAUSE OF ACTION**
9 **FOR VIOLATIONS OF THE CALIFORNIA PUBLIC RECORDS ACT**
10 (RELIEF PURSUANT TO GOV. CODE SECTION 6258; CODE CIV. PROC. SECTIONS
11 1060, 1085)

12 29. Petitioner hereby realleges and incorporates herein by this reference
13 Paragraphs 1 thorough 25 of this Petition as though set forth herein in full.

14 30. The CPRA, in Government Code, section 6252, defines terms relevant to
15 this cause of action as follows:

16 **"Public records"** includes any writing containing information relating to
17 the conduct of the public's business prepared, owned, used, or retained by
18 any state or local agency regardless of physical form or characteristics....

19 **"Writing"** means any handwriting, typewriting, printing, photostating,
20 photographing, photocopying, transmitting by electronic mail or facsimile,
21 and every other means of recording upon any tangible thing any form of
22 communication or representation, including letters, words, pictures,
23 sounds, or symbols, or combinations thereof, and any record thereby
24 created, regardless of the manner in which the record has been stored.

25 31. The requested records relate to the conduct of the people's business and
26 were prepared, owned, used or retained by UCSD, and are, therefore, deemed to be
27 public records pursuant to Government Code, section 6252(e).

28 32. Government Code, section 6253(b) provides, in pertinent part, that:

Except with respect to public records exempt from disclosure by express
provisions of law, each state or local agency, upon a request for a copy of

1 records that reasonably describes an identifiable record or records, shall
2 make the records promptly available to any person upon payment of fees
3 covering direct costs of duplication, or a statutory fee if applicable. Upon
4 request, an exact copy shall be provided unless impracticable to do so.

5 33. Government Code, section 6253(c) requires that:

6 Each agency, upon a request for a copy of records, shall within 10 days
7 from receipt of the request, determine whether the request, in whole or
8 part, seeks copies of disclosable public records in the possession of the
9 agency and shall promptly notify the person making the request of the
10 determination and the reasons therefor.

11 34. UCSD failed to determine and notify Petitioner as to whether records
12 exist that are responsive to Petitioner's CPRA Requests. UCSD further failed to
13 produce the responsive records, thereby violating Government Code, section 6253(c).

14 35. Government Code, section 6253(d) prohibits a public agency from
15 delaying or obstructing "the inspection or copying of public records."

16 36. By refusing to identify and disclose records responsive to Petitioner's
17 CPRA Requests, UCSD violated Government Code, section 6253(d).

18 37. Government Code, section 6255(a) requires that a public agency justify its
19 withholding of any record:

20 The agency shall justify withholding any record by demonstrating that the
21 record in question is exempt under express provisions of this chapter or
22 that on the facts of the particular case the public interest served by not
23 disclosing the record clearly outweighs the public interest served by
24 disclosure of the record.

25 38. While UCSD failed to explicitly invoke an exemption to withhold records,
26 it made repeated reference to Government Code, section 6254(c) in its denial letters.
27 However, UCSD cannot sustain a withholding under that provision.

28 39. The limited exemption in Government Code, section 6254(c) applies to
"personnel, medical, or similar files the disclosure of which would constitute an
unwarranted invasion of personal privacy."

1 40. Employees have no reasonable expectation of privacy in sustained
2 complaints where the allegations carry a sufficient indicia of reliability,⁴ the complaint
3 has been sustained, or discipline has been imposed. *See, e.g., Caldecott v. Superior*
4 *Court* (2015) 243 Cal.App.4th 212; *Marken v. Santa Monica-Malibu Unified* (2012)
5 202 Cal.App.4th 1250; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742.

6 41. Petitioner believes that the records at issue here are not exempt under
7 Government Code, section 6254(c) because the allegations in the complaint were
8 sustained and discipline was imposed.

9 42. Petitioner has exhausted his administrative remedies. Petitioner has
10 requested copies of unredacted, disclosable public records from UCSD, but UCSD has
11 refused to provide access to those public records. The only plain, speedy, and adequate
12 remedy left to Petitioner is the relief provided by Government Code, section 6258.

13 43. Government Code, section 6258 provides:

14 Any person may institute proceedings for injunctive or declarative relief or
15 writ of mandate in any court of competent jurisdiction to enforce his or
16 her right to inspect or to receive a copy of any public record or class of
public records under this chapter.

17 44. Government Code, section 6259 provides:

18 Whenever it is made to appear by verified petition to the superior court of
19 the county where the records or some part thereof are situated that certain
20 public records are being improperly withheld from a member of the public,
21 the court shall order the officer or person charged with withholding the
22 records to disclose the public record or show cause why he or she should
23 not do so. The court shall decide the case after examining the record in
camera, if permitted by subdivision (b) of Section 915 of the Evidence
Code, papers filed by the parties and any oral argument and additional
evidence as the court may allow.

24 45. Code of Civil Procedure, section 1060 provides:

27 ⁴ Where the employee is a public official, the standard of reliability is lower, and the records are not
28 exempt unless the accusations are so unreliable as to not be anything but false. *BRV, Inc. v. Superior*
Court (2006) 143 Cal.App.4th 742, 759.

1 Any person interested ... who desires a declaration of his or her rights or
2 duties with respect to another ... may, in cases of actual controversy
3 relating to the legal rights and duties of the respective parties, bring an
4 original action or cross-complaint in the superior court for a declaration of
5 his or her rights and duties in the premises, including a determination of
6 any question of construction or validity arising under the instrument or
7 contract. He or she may ask for a declaration of rights or duties, either
8 alone or with other relief; and the court may make a binding declaration of
9 these rights or duties, whether or not further relief is or could be claimed
10 at the time....

11 46. Petitioner has demonstrated that an actual controversy exists between
12 the parties regarding UCSD's responsibility to disclose records under the CPRA.

13 47. UCSD has a ministerial duty to perform according to the laws of State of
14 California, including the CPRA.

15 48. Petitioner has an interest in having the laws executed and public duties
16 enforced and, therefore, has a beneficial interest in the outcome of the proceedings.

17 49. Petitioner has a clear, present, and legal right to the UCSD's performance
18 of its ministerial duties, as required by the CPRA.

19 50. UCSD has a present legal duty and present ability to perform its
20 ministerial duties, as required by the CPRA.

21 51. UCSD has failed to perform its ministerial duties as required by the
22 CPRA.

23 52. Through this action, Petitioner seeks no greater relief than would be
24 afforded to any other member of the public.

25 53. Therefore, this Court should find that the records requested by Petitioner
26 are disclosable public records and that UCSD violated the CPRA by refusing to release
27 those records, and should then order UCSD to immediately release copies of all
28 responsive public records.

WHEREFORE, PETITIONER PRAYS AS FOLLOWS:

1. That after a trial of this action, to be held on notice, this Court issue a
declaration that:

- 1 (a) The records requested by Petitioner are public records;
2 (b) No exemption applies to their disclosure; and,
3 (c) Respondent REGENTS OF THE UNIVERSITY OF CALIFORNIA
4 violated the California Public Records Act by failing to properly
5 respond to Petitioner's CPRA REQUESTS.

6 2. That this Court issue a writ of mandate ordering Respondent REGENTS
7 OF THE UNIVERSITY OF CALIFORNIA to perform as required by the California
8 Public Records Act and to release all of the records responsive to the CPRA Requests;


9 3. That Petitioner/Plaintiff ETHAN EDWARD COSTON recover attorneys'
10 fees incurred in this action pursuant to Government Code Section 6259 and/or Code of
11 Civil Procedure Section 1021.5;

12 4. For an award of costs incurred in this action; and,

13 5. For such other and further relief as the court deems just and proper.
14

15 DATED: March 27, 2019

LAW OFFICES OF ABENICIO CISNEROS

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Abenicio Cisneros
Attorney for Petitioner
ETHAN EDWARD COSTON

VERIFICATION

I, ETHAN EDWARD COSTON, am the Petitioner and Plaintiff in this action. I have read the foregoing Petition for Writ of Mandate/Complaint for Declaratory Relief and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, I also believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this the 27 day of March, 2019 in San Diego, California.



ETHAN EDWARD COSTON
Petitioner and Plaintiff

EXHIBIT 1



Ethan Coston <eth.coston@gmail.com>

Title IX Records related to Alan Labotski

Ethan Coston <eth.coston@gmail.com>

Wed, Apr 11, 2018 at 8:58 PM

To: cprarequests@ucsd.edu

Dear Public Records Officer,

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.), I ask to obtain electronic copies of the following records, which I understand to be held by the Policy & Records Administration:

- Title IX and Personnel Records related to Alan Labotski, former Operations Manager at the UC San Diego Bookstore

I ask for a determination on this request within 10 days of your receipt of it, and an even prompter reply if you can make a determination without having to review the record[s] in question. If you determine that any or all of the information qualifies for an exemption from disclosure, I ask that you note whether, as is normally the case under the Act, the exemption is discretionary, and if so whether it is necessary in this case to exercise your discretion to withhold the information.

If you determine that some but not all of the information is exempt from disclosure and you intend to withhold it, I ask that you redact the exempt portion[s] for the time being and make the rest available as requested. If I can provide any clarification that will help expedite your attention to my request, please contact me at [\(619\) 518-8260](tel:6195188260).

I am a member of the news media affiliated with The Triton, an independent news organization, and this request is made as part of news gathering and not for a commercial use. I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest. I believe that there is significant public value in evaluating the candor and email correspondence of both advisors, due to information that I have been provided by several students. I am also aware of several emails that I would like to see, but because of this, I would like to evaluate all correspondence.

I ask that you notify me of any duplication costs exceeding \$5 before you duplicate the records so that I may decide which records I want copied. I would prefer these files in electronic PDF. Thank you for your time and attention to this matter.

Sincerely,

Ethan Coston
The Triton Staff News Writer
eth.coston@gmail.com
(619) 518-8260

EXHIBIT 2



POLICY & RECORDS ADMINISTRATION

VIA ELECTRONIC MAIL

9500 GILMAN DRIVE
LA JOLLA, CALIFORNIA 92093-0014
TELEPHONE: (858) 534-2552
FAX: (858) 534-6523

April 25, 2018

Ethan Coston
The Triton Staff News Writer
eth.coston@gmail.com

Dear Mr. Coston:

This responds to your request, pursuant to the California Public Records Act, for "Title IX and Personnel Records related to Alan Labotski, former Operations Manager at the UC San Diego Bookstore." The University has determined that there are no disclosable records that are responsive to your request.

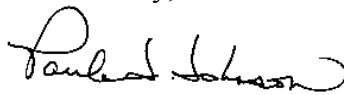
Personnel records are exempt from public disclosure where disclosure would constitute an "unwarranted invasion of personal privacy." (Gov. Code section 6254(c).) Determining whether disclosure constitutes an unwarranted invasion of personal privacy requires the University to balance the privacy interests of an employee against the public interest in access to information about how the University conducts the public business. Where public records include allegations of misconduct that are not substantiated, the balance weighs in favor of the accused employee's privacy interest in protecting their reputation against the taint of unsubstantiated allegations.

Even where an allegation of misconduct is substantiated, where the conduct was not of a "substantial nature", particularly where a respondent employee is not a high-level public official or does not hold a special position of trust in relation to the complainant, disclosure of a respondent employee's identity would constitute an unwarranted invasion of personal privacy. (Government Code section 6254(c).) *BRV, Inc. v. Superior Court of Siskiyou County* (2006) 143. Cal.App.4th 742, 758-759. The public interest in withholding respondent identity in these cases clearly outweighs the interest in disclosure. (Government Code section 6255(a).) *City of San Jose v. Superior Court* (1999) 75 Cal.App.4th 1008, 1018-19 (disclosure of identity would not "contribute significantly to public understanding of government activities" and serve the legislative purpose of "shed[ding] light on an agency's performance of its statutory duties.")

For these reasons, the University declines to confirm or deny the existence of Title IX or other investigatory records in response to requests regarding named individuals unless: a) the records contain substantiated allegations of misconduct, and b) the conduct is such that the public interest in disclosing the respondent employee's identity outweighs the employee's right to privacy.

Ethan Coston
April 25, 2018
Page 2

Sincerely,

A handwritten signature in black ink, appearing to read "Paula J. Johnson". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Paula J. Johnson
Director

EXHIBIT 3



Ethan Coston <eth.coston@gmail.com>

PUBLIC RECORDS REQUEST

Ethan Coston <eth.coston@gmail.com>
To: "CPRA, Requests" <cprarequests@ucsd.edu>

Mon, Jul 16, 2018 at 9:00 AM

Dear Public Records Officer,

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.), I ask to obtain electronic copies of the following records, which I understand to be held by the Policy & Records Administration:

- All records relating to charges or misconduct complaints against Alan Labotski, former employee of the UC San Diego Bookstore, that resulted in any disciplinary action or in a finding of responsibility.
- Regardless of any disciplinary action or finding of responsibility, records reflecting the number and nature of all complaints received involving the conduct of Alan Labotski, including, but not limited to, any complaints that could be characterized as alleging sexual harassment or sexual misconduct, or any record where Alan Labotski is named as the respondent in a Title IX investigation.

Since Mr. Labotski has not been employed at the UC San Diego Bookstore since December 2017, I believe the harm to him by disclosing his record is outweighed by the benefit of informing students and dispelling/confirming rumor, which has already had a ruinous effect on his image in the Bookstore. This disclosure will allow the students he worked and interacted with to know if they were working with a predator, since students were not informed during the alleged investigation. In addition, confirmation or denial of his record will either confirm or dispel rumors flying around the UC San Diego Bookstore, perpetuated by most students and staff on whether Mr. Labotski retired because of a Title IX investigation where he was found guilty.

I ask for a determination on this request within 10 days of your receipt of it, and an even prompter reply if you can make a determination without having to review the record[s] in question. If you determine that any or all of the information qualifies for an exemption from disclosure, I ask that you note whether, as is normally the case under the Act, the exemption is discretionary, and if so whether it is necessary in this case to exercise your discretion to withhold the information. I would note that willful violation of the open records law can result in the award of costs and reasonable attorney fees. See Sec. 6259(d).

If you determine that some but not all of the information is exempt from disclosure and you intend to withhold it, I ask that you redact the exempt portion[s] for the time being and make the rest available as requested.

If I can provide any clarification that will help expedite your attention to my request, please either email me your questions or email me to schedule a phone call at eth.coston@gmail.com.

I am a member of the news media affiliated with *The Triton*, an independent news organization, and this request is made as part of news gathering and not for a commercial use. I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest show students what administration is doing to protect them from predators and predatory behavior.

I ask that you notify me of any duplication costs exceeding \$5 before you duplicate the records so that I may decide which records I want copied. I would prefer these files in electronic PDF. Thank you for your time and attention to this matter.

Best,

Ethan Coston

Assistant News Editor | Campus Politics/External Affairs Beat Lead | [The Triton](#)
Staff Writer | [The MQ](#)

Student Journalist | [EthanCoston.com](https://ethancoston.com)

Muir College | UC San Diego | Political Science | C.O. 2020

He/Him/His

EXHIBIT 4



POLICY & RECORDS ADMINISTRATION

VIA ELECTRONIC MAIL

9500 GILMAN DRIVE
LA JOLLA, CALIFORNIA 92093-0014
TELEPHONE: (858) 534-2552
FAX: (858) 534-6523

August 3, 2018

Ethan Coston
The Triton Staff News Writer
eth.coston@gmail.com

Dear Mr. Coston:

This responds to your request, pursuant to the California Public Records Act, seeking:

- *All records relating to charges or misconduct complaints against Alan Labotski, former employee of the UC San Diego Bookstore, that resulted in any disciplinary action or in a finding of responsibility.*
- *Regardless of any disciplinary action or finding of responsibility, records reflecting the number and nature of all complaints received involving the conduct of Alan Labotski, including, but not limited to, any complaints that could be characterized as alleging sexual harassment or sexual misconduct, or any record where Alan Labotski is named as the respondent in a Title IX investigation.*

The materials sought are duplicative of the request you submitted on April 11, 2018, seeking “Title IX and Personnel Records related to Alan Labotski.” The University affirms its determination on that request, and reiterates that there are no disclosable records that are responsive to your request.

Personnel records are exempt from public disclosure where disclosure would constitute an “unwarranted invasion of personal privacy.” (Gov. Code section 6254(c).) Determining whether disclosure constitutes an unwarranted invasion of personal privacy requires the University to balance the privacy interests of an employee against the public interest in access to information about how the University conducts the public business. Where public records include allegations of misconduct that are not substantiated, the balance weighs in favor of the accused employee’s privacy interest in protecting their reputation against the taint of unsubstantiated allegations.

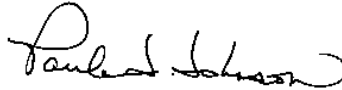
Even where an allegation of misconduct is substantiated, where the conduct was not of a “substantial nature”, particularly where a respondent employee is not a high-level public official or does not hold a special position of trust in relation to the complainant, disclosure of a respondent employee’s identity would constitute an unwarranted invasion of personal privacy. (Government Code section 6254(c).) *BRV, Inc. v. Superior Court of Siskiyou County* (2006) 143. Cal.App.4th 742, 758-759. The public interest in withholding respondent identity in these cases clearly outweighs the interest in disclosure. (Government Code section 6255(a).) *City of San Jose v. Superior Court* (1999) 75 Cal.App.4th 1008,

Ethan Coston
August 3, 2018
Page 2

1018-19 (disclosure of identity would not “contribute significantly to public understanding of government activities” and serve the legislative purpose of “shed[ding] light on an agency’s performance of its statutory duties.”)

For these reasons, the University declines to confirm or deny the existence of Title IX or other investigatory records in response to requests regarding named individuals unless: a) the records contain substantiated allegations of misconduct, and b) the conduct is such that the public interest in disclosing the respondent employee’s identity outweighs the employee’s right to privacy.

Sincerely,

A handwritten signature in black ink, appearing to read "Paula J. Johnson", with a stylized flourish at the end.

Paula J. Johnson
Director

EXHIBIT 5



Ethan Coston <eth.coston@gmail.com>

PUBLIC RECORDS REQUEST

Ethan Coston <eth.coston@gmail.com>

Wed, Aug 15, 2018 at 8:47 PM

To: "CPRA, Requests" <cprarequests@ucsd.edu>

Hello,

In response to your decision to deny this request for the second time, please note that California courts have established a fairly liberal standard for disclosure of public records relating to complaints or investigations of misconduct by public employees. They have held that there is a public policy against disclosure of "trivial or groundless charges," but that **"where the charges are found true, or discipline is imposed"**, the strong public policy against disclosure vanishes; this is true even where the sanction is a private reproof. In such cases a member of the public is entitled to information about the complaint, the discipline, and the 'information upon which it was based.'" *American Federation of State, County and Municipal Employees v. Regents of the University of Cal.*, 80 Cal. App. 3d 913, 918 (1978) (emphasis added); *accord, Bakerfield City School Dist. v. Sup. Ct.*, 118 Cal. App. 4th 1041, 1044, 1046 (2004).

I urge you to reconsider the denial of my request and note that *The Triton* is fully prepared to take legal action for the release of these records if you choose to deny them. Per the California Public Records Act, I request that you send a response within 10 days. As always feel free to redact exempt portions of the record I requested for Alan Labotski.

Best,

Ethan Coston

Assistant News Editor | Campus Politics/External Affairs Beat Lead | *The Triton*

Student Journalist | EthanCoston.com

Muir College | UC San Diego | Political Science | C.O. 2020

He/Him/His

Twitter: [@Ethan4Books](https://twitter.com/Ethan4Books)

[Quoted text hidden]

EXHIBIT 6



POLICY & RECORDS ADMINISTRATION

VIA ELECTRONIC MAIL

9500 GILMAN DRIVE
LA JOLLA, CALIFORNIA 92093-0014
TELEPHONE: (858) 534-2552
FAX: (858) 534-6523

August 31, 2018

Ethan Coston
The Triton Staff News Writer
eth.coston@gmail.com

Dear Mr. Coston:

This responds to your email asking UC San Diego to reconsider its denial of your California Public Records Act request seeking:

- *All records relating to charges or misconduct complaints against Alan Labotski, former employee of the UC San Diego Bookstore, that resulted in any disciplinary action or in a finding of responsibility.*
- *Regardless of any disciplinary action or finding of responsibility, records reflecting the number and nature of all complaints received involving the conduct of Alan Labotski, including, but not limited to, any complaints that could be characterized as alleging sexual harassment or sexual misconduct, or any record where Alan Labotski is named as the respondent in a Title IX investigation.*

The University affirms its determination on that request, and reiterates that there are no disclosable records that are responsive to your request.

Personnel records are exempt from public disclosure where disclosure would constitute an “unwarranted invasion of personal privacy.” (Gov. Code section 6254(c).) Determining whether disclosure constitutes an unwarranted invasion of personal privacy requires the University to balance the privacy interests of an employee against the public interest in access to information about how the University conducts the public business. Where public records include allegations of misconduct that are not substantiated, the balance weighs in favor of the accused employee’s privacy interest in protecting their reputation against the taint of unsubstantiated allegations.

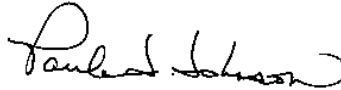
Even where an allegation of misconduct is substantiated, where the conduct was not of a “substantial nature”, particularly where a respondent employee is not a high-level public official or does not hold a special position of trust in relation to the complainant, disclosure of a respondent employee’s identity would constitute an unwarranted invasion of personal privacy. (Government Code section 6254(c).) *BRV, Inc. v. Superior Court of Siskiyou County* (2006) 143. Cal.App.4th 742, 758-759. The public interest in withholding respondent identity in these cases clearly outweighs the interest in disclosure. (Government Code section 6255(a).) *City of San Jose v. Superior Court* (1999) 75 Cal.App.4th 1008,

Ethan Coston
August 31, 2018
Page 2

1018-19 (disclosure of identity would not “contribute significantly to public understanding of government activities” and serve the legislative purpose of “shed[ding] light on an agency’s performance of its statutory duties.”)

For these reasons, the University declines to confirm or deny the existence of Title IX or other investigatory records in response to requests regarding named individuals unless: a) the records contain substantiated allegations of misconduct, and b) the conduct is such that the public interest in disclosing the respondent employee’s identity outweighs the employee’s right to privacy.

Sincerely,

A handwritten signature in black ink, appearing to read "Paula J. Johnson", with a stylized, flowing script.

Paula J. Johnson
Director

EXHIBIT 7

PUBLIC RECORDS REQUEST

Ethan Coston <ecoston@ucsd.edu>

Mon, Oct 29, 2018 at 11:53 AM

To: "CPRA, Requests" <cprarequests@ucsd.edu>

Cc: news@triton.news

Dear Public Records Officer,

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.), I ask to obtain electronic copies of the following records, which I understand to be held by the Policy & Records Administration:

- Emails to or from UCSD bookstore director Tom Bonetati pertaining to the OPHD investigation of Alan Labotsky, including, but not limited to, bookstore internal communications and communications with OPHD.

I ask for a determination on this request within 10 days of your receipt of it, and an even prompter reply if you can make a determination without having to review the record[s] in question. If you determine that any or all of the information qualifies for an exemption from disclosure, I ask that you note whether, as is normally the case under the Act, the exemption is discretionary, and if so whether it is necessary in this case to exercise your discretion to withhold the information. I would note that willful violation of the open records law can result in the award of costs and reasonable attorney fees. See Sec. 6259(d).

If you determine that some but not all of the information is exempt from disclosure and you intend to withhold it, I ask that you redact the exempt portion[s] for the time being and make the rest available as requested.

If I can provide any clarification that will help expedite your attention to my request, please either email me your questions or email me to schedule a phone call at eth.coston@gmail.com.

I am a member of the news media affiliated with *The Triton*, an independent news organization, and this request is made as part of news gathering and not for a commercial use. I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.

I ask that you notify me of any duplication costs exceeding \$5 before you duplicate the records so that I may decide which records I want copied. I would prefer these files in electronic PDF. Thank you for your time and attention to this matter.

Best,

Ethan Coston

Assistant News Editor|Campus Politics/External Affairs Beat| *The Triton*

Student Journalist|EthanCoston.com

Muir College|UC San Diego|Political Science|C.O. 2020

He/Him/His

Twitter: [@Ethan4Books](https://twitter.com/Ethan4Books)

PUBLIC RECORDS REQUEST

Ethan Coston <ecoston@ucsd.edu>

Mon, Oct 29, 2018 at 11:52 AM

To: "CPRA, Requests" <cprarequests@ucsd.edu>

Cc: news@triton.news

Dear Public Records Officer,

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.), I ask to obtain electronic copies of the following records, which I understand to be held by the Policy & Records Administration:

- Emails between former UC San Diego Bookstore operations director Alan Labotsky and bookstore director Tom Bonetati from July 1, 2017 to January 31, 2018.

I ask for a determination on this request within 10 days of your receipt of it, and an even prompter reply if you can make a determination without having to review the record[s] in question. If you determine that any or all of the information qualifies for an exemption from disclosure, I ask that you note whether, as is normally the case under the Act, the exemption is discretionary, and if so whether it is necessary in this case to exercise your discretion to withhold the information. I would note that willful violation of the open records law can result in the award of costs and reasonable attorney fees. See Sec. 6259(d).

If you determine that some but not all of the information is exempt from disclosure and you intend to withhold it, I ask that you redact the exempt portion[s] for the time being and make the rest available as requested.

If I can provide any clarification that will help expedite your attention to my request, please either email me your questions or email me to schedule a phone call at eth.coston@gmail.com.

I am a member of the news media affiliated with *The Triton*, an independent news organization, and this request is made as part of news gathering and not for a commercial use. I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.

I ask that you notify me of any duplication costs exceeding \$5 before you duplicate the records so that I may decide which records I want copied. I would prefer these files in electronic PDF. Thank you for your time and attention to this matter.

Best,

Ethan Coston

Assistant News Editor|Campus Politics/External Affairs Beat| *The Triton*

Student Journalist|EthanCoston.com

Muir College|UC San Diego|Political Science|C.O. 2020

He/Him/His

Twitter: [@Ethan4Books](https://twitter.com/Ethan4Books)

EXHIBIT 8



POLICY & RECORDS ADMINISTRATION

VIA ELECTRONIC MAIL

9500 GILMAN DRIVE
LA JOLLA, CALIFORNIA 92093-0014
TELEPHONE: (858) 534-2552
FAX: (858) 534-6523

November 13, 2018

Ethan Coston
The Triton Staff News Writer
eth.coston@gmail.com

Dear Mr. Coston:

This responds to your request, pursuant to the California Public Records Act, seeking:

- *Emails to or from UCSD bookstore director Tom Bonetati pertaining to the OPHD investigation of Alan Labotsky, including, but not limited to, bookstore internal communications and communications with OPHD.*

You submitted several prior CPRA requests this year seeking records or information about complaints or investigations of misconduct by Alan Labotsky. In those cases the University responded that there were no disclosable records that were responsive to your request, and declined to confirm or deny the existence of responsive records, for the reasons set forth below. The same reasoning applies to this new request, and the University has again determined that there are no disclosable records that are responsive to your request.

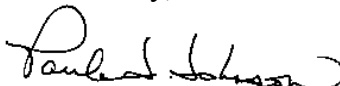
Personnel records are exempt from public disclosure where disclosure would constitute an “unwarranted invasion of personal privacy.” (Gov. Code section 6254(c).) Determining whether disclosure constitutes an unwarranted invasion of personal privacy requires the University to balance the privacy interests of an employee against the public interest in access to information about how the University conducts the public business. Where public records include allegations of misconduct that are not substantiated, the balance weighs in favor of the accused employee’s privacy interest in protecting their reputation against the taint of unsubstantiated allegations.

Even where an allegation of misconduct is substantiated, where the conduct was not of a “substantial nature”, particularly where a respondent employee is not a high-level public official or does not hold a special position of trust in relation to the complainant, disclosure of a respondent employee’s identity would constitute an unwarranted invasion of personal privacy. (Government Code section 6254(c).) *BRV, Inc. v. Superior Court of Siskiyou County* (2006) 143. Cal.App.4th 742, 758-759. The public interest in withholding respondent identity in these cases clearly outweighs the interest in disclosure. (Government Code section 6255(a).) *City of San Jose v. Superior Court* (1999) 75 Cal.App.4th 1008, 1018-19 (disclosure of identity would not “contribute significantly to public understanding of government activities” and serve the legislative purpose of “shed[ding] light on an agency’s performance of its statutory duties.”)

Ethan Coston
November 13, 2018
Page 2

For these reasons, the University declines to confirm or deny the existence of Title IX or other investigatory records in response to requests regarding named individuals unless: a) the records contain substantiated allegations of misconduct, and b) the conduct is such that the public interest in disclosing the respondent employee's identity outweighs the employee's right to privacy.

Sincerely,

A handwritten signature in black ink, appearing to read "Paula J. Johnson", with a stylized, flowing script.

Paula J. Johnson
Director

EXHIBIT 9

CPRA Request - Bonetati OPHD emails

Ethan Coston <ecoston@ucsd.edu>

Tue, Nov 13, 2018 at 7:03 PM

To: "CPRA, Requests" <cprarequests@ucsd.edu>

Cc: news@triton.news, managing@triton.news, kaviles@opengovlaw.com

Hi Scott,

In response to the letter, I just want to point out that it is pointless for you to deny access to these records because you do not want to confirm or deny the existence of the investigation of Alan Labotski, when parties involved with the investigation already came forward to me, confirmed it's existence, and gave me consent to write an article about it. I will take legal action for the release of these records if you still decide not to release them.

Best,
Ethan

On Tue, Nov 13, 2018, 6:42 PM CPRA, Requests <cprarequests@ucsd.edu> wrote:

Dear Mr. Coston,

Please find the University's determination on your CPRA request attached.

Regards,

Scott Sagle

Information Practices Coordinator

Policy & Records Administration

University of California, San Diego

(858) 534-3393

From: Ethan Coston <ecoston@ucsd.edu>

Sent: Monday, October 29, 2018 11:54 AM

To: CPRA, Requests <cprarequests@ucsd.edu>

Cc: news@triton.news

Subject: PUBLIC RECORDS REQUEST

Dear Public Records Officer,

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.), I ask to obtain electronic copies of the following records, which I understand to be held by the Policy & Records Administration:

- Emails to or from UCSD bookstore director Tom Bonetati pertaining to the OPHD investigation of Alan Labotsky, including, but not limited to, bookstore internal communications and communications with OPHD.

I ask for a determination on this request within 10 days of your receipt of it, and an even prompter reply if you can make a determination without having to review the record[s] in question. If you determine that any or all of the information qualifies for an exemption from disclosure, I ask that you note whether, as is normally the case under the Act, the exemption is discretionary, and if so whether it is necessary in this case to exercise your discretion to withhold the information. I would note that willful violation of the open records law can result in the award of costs and reasonable attorney fees. See Sec. 6259(d).

If you determine that some but not all of the information is exempt from disclosure and you intend to withhold it, I ask that you redact the exempt portion[s] for the time being and make the rest available as requested.

If I can provide any clarification that will help expedite your attention to my request, please either email me your questions or email me to schedule a phone call at eth.coston@gmail.com.

I am a member of the news media affiliated with *The Triton*, an independent news organization, and this request is made as part of news gathering and not for a commercial use. I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.

I ask that you notify me of any duplication costs exceeding \$5 before you duplicate the records so that I may decide which records I want copied. I would prefer these files in electronic PDF. Thank you for your time and attention to this matter.

Best,

Ethan Coston

Assistant News Editor

| Campus Politics/External Affairs

Beat | *The Triton*

Student Journalist | EthanCoston.com

Muir College | UC San Diego | Political Science | C.O. 2020

He/Him/His

Twitter: [@Ethan4Books](https://twitter.com/Ethan4Books)



2018-11-13 Final Determination - Bonetati OPHD Emails.pdf

40K

EXHIBIT 10



POLICY & RECORDS ADMINISTRATION

VIA ELECTRONIC MAIL

9500 GILMAN DRIVE
LA JOLLA, CALIFORNIA 92093-0014
TELEPHONE: (858) 534-2552
FAX: (858) 534-6523

November 14, 2018

Ethan Coston
The Triton Staff News Writer
eth.coston@gmail.com

Dear Mr. Coston:

This regards your request, pursuant to the California Public Records Act, seeking:

- *Emails between former UC San Diego Bookstore operations director Alan Labotsky and bookstore director Tom Bonetati from July 1, 2017 to January 31, 2018.*

A search for responsive records has been completed. There are no records responsive to your request. This completes your request.

Please contact me with any questions. My direct telephone number is (858) 534-2552.

Sincerely,

A handwritten signature in black ink, appearing to read "Paula J. Johnson".

Paula J. Johnson
Director